IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16-03-2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 19392 of 2001

S. Karthikeyanh,
69, Kumarasamy Street, Erode-1. .. Petitioner.

Vs.

1.Tamil Nadu Industrial Investment
Corporation Ltd., represented by its
Branch Manager, Sri Bhuvaneswari Complex,
2nd Floor, No.2 Dr. Sankaran Road, Namakkal.

2.M/s. C. Annamar Retrades represented by
its Partner Mr. V. Venugopalan,
No.139, Thoddarayan Koil Street, Kattoor,
Coimbatore-9.

3.Mr. Venugopalan, Partner of M/s. Annamar
Retrades, No.139, Thoddarayan Koil Street,
Kattoor, Coimbatore-9.

4.Mrs. V. Dhanapackiam, W/o. Venugopalan,
Partner of M/s. C. Annamar Retrades,
No.139, Thoddarayan Koil Street, Kattoor,
Coimbatore-9. .. Respondents.

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of first respondent culminated in his proceedings in TIIC/NKL/LAO-MN/2001-2002 dated 14-5-2001 and TIIC/FU 1AO4/2001-2002 dated 1-8-2001, quash the same and consequently directing the first respondent to release the property of the petitioner from the first respondent situated in Survey Nos. 704/6 and 704/7 in Modakurichi village, Erode Taluk, Erode District with an extent of 1.30 acres.

Mr. M.M. Sundresh:- For Petitioner.

Mr. B. Saraswathi:- For 1st Respondent.

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Mr. M. Sathyanarayanan:- For Respondents 2 and 3.

No appearance:- For R-4.

ORDER

Aggrieved by the proceedings of the first respondent dated 14-5-2001 and 01-8-2001 refusing to release the documents furnished as collateral security and direction to clear the over-dues, the petitioner has filed the above Writ Petition to quash the same and consequently direct the first respondent to release the property of the petitioner in Survey No. 704/6 and 704/7 in Modakurichi village, Erode Taluk, Erode District with an extent of 1.30 acres.

2. The case of the petitioner is briefly stated hereunder:

According to him, he started a partnership firm in the year 1991 pursuant to the registered partnership deed entered into between himself and one Anbuchelian by virtue of partnership deed executed on 25-01-1991. The said firm has been established in doing business in tyre retreading. A loan has been obtained from the first respondent to a tune of Rs.14,15,000/-. The said firm had registered Mortgage Deed on 6-5-1992 along with an equitable mortgage, hypothecation deed and undertaking power of attorney. The petitioner has also given a collateral security for the value of Rs.1,00,000/-. The property given for collateral security situated in Survey Nos. 704/6 and 704/7 in Modakurichi village of Erode District with an extent of 1.30 acres.

3. It is further stated that on 1-4-1996 another registered Deed of Partnership has been created between the two existing partners and the respondents 3 and 4 herein, by which the respondents 3 and 4 have been given 40 per cent share each in the partnership firm. The said fact was also intimated to the first respondent. By another registered partnership dated 15-4-1996, the petitioner and the said Anbuchelian have retired from the above said partnership firm thereby respondents 3 and 4 alone have become the only partners entitled to all the rights and liabilities of the firm. After the partnership firm deed dated 15-4-1996, the petitioner has nothing to do with the firm after his retirement. Clause 3 of the said partnership firm stipulates that the respondents 3 and 4 shall take over the liabilities due to the first respondent and they have to offer adequate securities towards the same. Till the first respondent approves the new partnership firm, it is the duty of the petitioner to continue to help the respondents 3 and 4 in so far as the dealings with the first respondent.

4. It is the further case of the petitioner that pursuant to the same, respondents 3 and 4 have entered into a new partnership firm on 16-4-1996. Pursuant to the same, respondents 3 and 4 have

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handed over all the documents to the first respondent for the purpose of changing all the liabilities in the name of the new firm. Since the formalities have not been completed including the acceptance of the additional security given by the third respondent, the petitioner has given a letter on 1-11-1999 to the first respondent stating that the additional security given by him would be continued. By order dated 3-10-2000, the first respondent has approved the change of management in favour of respondents 2 to 4. Pursuant to the same, the first respondent also entered into an agreement of confirmation and undertaking thereby the respondents 2 to 4 have undertaken to discharge all the liabilities due to the first respondent. After the approval of the second respondent firm by the first respondent, the first respondent is duty bound to discharge collateral security and release the document of the petitioner. Though several representations have been made, the same were not considered by the first respondent.

5. In the counter filed by the first respondent, it is admitted that though the petitioner and other partner retired from the partnership firm till respondents 2 to 4 furnish additional security, the petitioner gave a letter continuing his security. Since the respondents 2 to 4 have not discharged the loan amount, the first respondent is entitled to proceed against the property of the petitioner which was given as collateral security. Hence their action is justified.

6. Heard Mr. M.M. Sundresh, learned counsel for the petitioner; Mr. B. Saraswathy for 1st respondent and Mr. M. Sathyanarayanan for respondents 2 and 3.

7. It is not in dispute that initially the writ petitioner and one N. Anbuchelian were partners and executed a partnership deed on 25-1-1991 to start and run a tyre retreading at Tiruchengodu. In order to continue the business in tyre retreading, they obtained loan from the first respondent to the tune of Rs.14,15,000/- and executed a mortgage deed on 6-5-1992 along with an equitable mortgage, hypothecation deed and undertaking power of attorney. It is also not in dispute that apart from the documents, the petitioner has also furnished collateral security of the land in Survey No. 704/6 and 704/7 in Modakurichi village. It is the case of the petitioner that on 1-4-1996, another deed of partnership had been created between two existing partners, namely, petitioner and the said Anbuchelian and respondents 3 and 4 herein, by which respondents 3 and 4 have been given 40 per cent share each in the partnership firm. By another deed dated 15-4-1996, the petitioner and the said Anbuchelian retired from the said partnership firm, thereby respondents 3 and 4 have become the only partners entitled to all the rights and liabilities of the firm. The said document dated 15-4-1996 particularly clause 3, stipulates that the respondents 3 and 4 shall take over the liabilities due to the first respondent and they have to offer adequate security towards the

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same. It is also brought to my notice that pursuant to the intimation by respondents 3 and 4, the first respondent accepted the new partnership and by letter dated 3-10-2000 approved the new management. The perusal of the letter dated 3-10-2000 shows that the first respondent accorded their expost facto approval for the change of management from S. Karthikeyan-writ petitioner and N. Anbuchezhian, another partner, to V. Venugopalan and V. Dhanabagyam, respondents 3 and 4. The letter further shows that the new partners, namely, respondents 3 and 4 executed legal documents as required by their Corporation. In the same letter, the first respondent has also directed them to settle their loan amount at the earliest as per letter dated 25-9-2000. Since the first respondent has not returned the documents and released the collateral security, the petitioner has approached this Court.

8. It is seen that though the first respondent has approved the change of management, it is not in dispute that the change of management was approved on entertaining the collateral security of the petitioner till the settlement of the loan account and also not in dispute that the petitioner had given a consent letter dated 1-11-99. This has been specifically stated in the reply dated 14-5-2001 by the first respondent. Though Mr. M.M. Sundresh, learned counsel for the petitioner, heavily relied on the acceptance letter dated 3-10-2000 of the first respondent, it is not in dispute that the said acceptance is subject to settlement of the entire loan amount and till such time the petitioner has also executed a letter continuing his collateral security in discharge of the loan amount. Inasmuch as the respondents 3 and 4 have not settled the loan amount as per the terms of the agreement and in terms of Section 29 of the State Financial Corporations Act, 1951, the first respondent is entitled to proceed against the collateral security offered by the petitioner. It is settled law that if there are several remedies available to the State Finance Corporation, it is the choice of the Corporation as to which remedy it would pursue and the defaulting party cannot compel the Financial Corporation to take recourse in a particular remedy. So long as the loan amount stands undischarged and in view of the fact that the respondents 3 and 4 have not furnished additional security and the petitioner gave a consent letter extending his collateral security till the settlement of loan account, I am of the view that the action taken by the first respondent cannot be faulted with. The petitioner is free

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to persuade the respondents 3 and 4 either to settle the entire loan account by availing scheme, if any, or furnish additional security exonerating the liability of the petitioner. With the above observation, the Writ Petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

R.B.

To

1. The Branch Manager,
Tamil Nadu Industrial Investment
Corporation Ltd., Sri Bhuvaneswari Complex,
2nd Floor, No.2 Dr. Sankaran Road, Namakkal.

+1cc to M/s. B.Saraswathi, Advocate Sr 12914
+1cc to M/s. M.M.Sundaresh, Advocate Sr 13168

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km/23.3.

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